



## COCHISE COUNTY

# COMMUNITY DEVELOPMENT

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### MEMORANDUM

**TO:** Cochise County Board of Supervisors  
Through: Michael J. Ortega, County Administrator

**FROM:** Keith Dennis, Planner II  
For: Beverly J. Wilson, Director, Planning Division

**SUBJECT:** Docket SUA-13-07 (Van Wart Appeal)

**DATE:** July 9, 2013, for the July 23, 2013 Meeting

### APPEAL OF A SPECIAL USE AUTHORIZATION

*Cochise Citizens for Fair Zoning* has filed an appeal of a decision rendered by the Cochise County Planning and Zoning Commission on Wednesday, May 15, 2013. On a 4–3 vote, the Commission granted Special Use authorization for a portable restroom and septic pumping business located at 144 S. Sundust Trail in St. David (parcel 124-41-005H). Section 1716.04 of the Zoning Regulations provides that appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing.

### I. NATURE OF THE APPEAL

*Cochise Citizens for Fair Zoning* (CCFZ) initiated the appeal of Docket SU-13-07 after the Commission approved the request on May 15, 2013 in a 4–3 decision (*Yes: Martzke; Bemis; Edie and Garcia. No: Lynch; Cervantes and Weissler*). The Appellants' rationales for appeal include:

- The Docket was approved under false information provided by the Applicants;
- The project is incompatible with the rural character of the neighborhood and does not, therefore, comply with the land use policies of the St. David Area Plan; and
- The business was started without permits either from the County, or from the state Department of Environmental Quality (ADEQ).

Also of concern to the Appellants is the fact that the business utilizes a 1,000-gallon residential septic tank, used for temporary storage of waste on the property. This aspect of the business was not disclosed as part of the Citizen Review process, which the Appellants consider a significant deviation from the scope and type of project that was presented by the Applicant to his neighbors as part of the requisite Citizen Review process for Special Use requests.

Attachment A to this report includes the Appellants' analysis of the proposed use, transcripts of the May 15, 2013 Commission hearing testimony from Mr. Van Wart and others, and information from ADEQ regarding the septic trucks used by the Applicant. Attachment B provides Mr. Van Wart's response to the appeal, and additional information.

## **II. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES**

Parcel Size: 4.0-acres  
Zoning: Rural (RU-4)  
Growth Area: Category D (Rural)  
Plan Designation: Rural-Density Residential  
Area Plan: St. David Area Plan  
Existing Uses: Single-family residential and portable restroom/septic service

### **Surrounding Zoning and Uses**

<b>Relation to Subject Parcel</b>	<b>Zoning District</b>	<b>Use of Property</b>
North	RU-4	Rural Residential
South	RU-4	Rural Residential
East	RU-4	Companero Road, Rural Residential
West	RU-4	Sundust Trail, Undeveloped Land

## **III. PARCEL HISTORY**

- The parcel subject to this request was originally part of a larger parcel, parcel 124-41-005E. In 2004, staff processed a permit for three single family homes on this 13.40-acre parcel, which was subsequently split into three parcels.
- The owners and Applicants purchased the property in 2008, and conducted the septic service and portable restroom business at another location. In 2012, the Applicants moved the business to their place of residence.
- In 2013, a Violation was issued for a business without a permit. Docket SU-13-07 was initiated to resolve the Violation.

## **IV. NATURE OF SPECIAL USE REQUEST**

Applicants Tom and Ashley Van Wart have operated a septic pumping and service as well as a portable restroom business for about five years. Mr. Van Wart decided in 2012 to relocate the business headquarters from Mescal to his residence in St. David; the residence also serves as the home office for the business.



*Location of the Van Wart property, just off Patton Road in St. David.*

The business owns and services approximately 120-portable restroom units, for use by the Border Patrol and at job sites in Sierra Vista and Tucson. The majority of these portable units are out in the field most of the time, with as many as 25 to 30 stored on the property at any given time. The septic service part of this business operates three pump trucks to service septic systems in the St. David area, as well as regionally. The three trucks carry either a 250-gallon, 1,000-gallon, or a 2,500-gallon storage tank for servicing area septic systems as well as the portable restrooms. The Applicant has also installed a 1,000-gallon septic tank, below ground level on the property. This tank is used to temporarily store waste material from the smaller pump trucks. The larger truck then removes the waste material for transport to designated dump sites in Sierra Vista and Tucson.

## **V. ANALYSIS OF IMPACTS – COMPLIANCE WITH SPECIAL USE FACTORS**

Section 1716.02 of the Zoning Regulations provides a list of 10 factors with which to evaluate Special Use applications. Staff uses these factors to help determine whether to recommend approval for a Special Use Permit, as well as to determine what conditions and/or Modifications may be needed. Eight of the 10 criteria apply to this request. The project as submitted complies with four of the eight applicable Special Use factors. If the Conditions of Approval recommended by Staff and the Modifications requested by the Applicant are applied, the project would comply with each of the eight applicable factors.

### **A. Compliance with Duly Adopted Plans: Complies**

The business is within the boundaries of the St. David Area Plan.

As a sub-set of the overall County Comprehensive Plan, the St. David Area Plan was adopted in 2005 as a policy guideline for future development in the community. In the Plan document there are a number of Vision Statements that articulate the community goals for future development, as well as specific policy statements that apply to rezoning and Special Use requests. Both the Vision Statements and policies emphasize support for businesses that serve the local area, particularly with regard to the rural residential nature of the area. One Vision Statement suggests support for “locally owned- and operated small scale, neighborhood-serving businesses.”

The Applicant’s business does serve the needs of the rural St. David community in its capacity as a septic service, although the portable restroom portion of the business is more regional in nature.

**B. Compliance with the Zoning District Purpose Statement: Complies**

Section 601.02 of the Zoning Regulations encourages “those types of non-residential and non-agricultural activities which serve local needs or provide a service and are compatible with rural living.”

**C. Development Along Major Streets: Not Applicable**

State Route 80 is the nearest major roadway, approximately ½-mile east.

**D. Traffic Circulation Factors: Complies (Subject to Condition #2)**

The property takes access from Patton Road, a rural minor access, County-maintained chip-sealed roadway to Sundust Trail, a private roadway with a 30-foot ingress/egress and utility easement. Compliance with this factor is assured through off-site improvements under certain circumstances. In this case, such improvements are warranted in order to protect the Patton Road travelway from degradation from continuous travel by trucks weighing as much as 10-tons. To accomplish this, the Commission imposed Condition #2, which would require the Applicant to obtain a County right-of-way permit, and install a commercial apron along the Patton Road access.

**E. Adequate Services and Infrastructure: Complies**

This factor concerns the ability of the Applicant to provide for necessary street, water, sewer and utility services on the property. The nature of the business is such that most activities take place off-site; apart from administration of the operation from the Applicant’s home, the site is used to store trucks, restroom units and septic waste on a temporary basis. In terms of infrastructure needs, the property is otherwise typical of Rural Residential homes in the area. The exception to this is the impact that larger trucks would have on the Patton Road travelway over time. This road impact is addressed in Condition #2, discussed above.

**F. Significant Site Development Standards: Complies (Subject to Requested Modification)**

The site is equipped with a covered parking structure used to shelter the pump trucks. This structure sits 25-feet from the southern property line, which means it does not comply with the 40-foot setback required for Special Uses in the Rural Districts.

The Applicant has asked that this standard be Modified in order to accommodate the existing

structure.



*South view of the storage area. Note the existing gravel surface at right.*

#### **G. Public Input: Complies**

The Applicant completed the Citizen Review process and received three responses: one neighbor stated they could not support the project, one supported it, and one offered a qualified statement of concern with ideas on how to mitigate off-site impacts and possible effects on neighboring property values.

#### **H. Hazardous Materials: Complies (See Condition #4)**

The Applicant maintains that all portable restrooms are cleaned off-site prior to being stored on the property. However, as discussed, there is a 1,000-gallon septic tank on the property used for temporary storage of waste materials. Condition #4 would require that the Applicant obtain all necessary permits and fulfill all conditions as required under local and state regulations for the operation of this tank.

#### **I. Off-Site Impacts: Complies (See Conditions #2, #3, #4 and #6)**

Condition #2, previously discussed, would mitigate impacts to the nearby Patton Road travelway.

Off-site impacts associated with this project could include dust, noise, odor, and visual impacts. The Applicant has already installed a dust-abating gravel surface for parking and driving areas, but County development standards would require that the area used to store the portable restroom units also be graveled (see Condition #4, requiring adherence to other local regulations).



*South view of the underground septic holding tank ports.*

The Applicant states that the portable restroom units are always clean before being stored on the property, and that no cleaning of these units takes place on the property. Staff recommends, as Condition #3, that no such washing or rinsing of portable restroom units take place on the property, to ensure mitigation of possible contamination and odor-related off-site impacts, as well as to conserve water.

In order to mitigate visual impacts, the Commission added a condition of approval (Condition #6), requiring that outdoor storage areas be screened.

#### **J. Water Conservation: Not Applicable (See Condition #3)**

This factor is not applicable, as the Applicant uses no water in the operation of the business on the property. However, Condition #3, as imposed by the Commission, would require that all portable restroom units be washed and rinsed off-site.

#### **VI. PUBLIC COMMENT**

The Department mailed notices to neighboring property owners within 1,500-feet of the subject property. Staff posted the property on June 13, 2013, and published a legal notice in the *Bisbee Observer* on June 27, 2013. In response to this mailing, the Department has received one statement of support from a neighboring property owner, and a petition with 50-signatures from County residents inside and outside the 1,500-foot notification buffer opposing the request.

#### **VII. MODIFICATION TO DEVELOPMENT STANDARDS**

Because the parking structure used on the site is already built, and is 25-feet from the southern property line, the Applicant requested that the Commission modify the 40-foot setback requirement for Special Uses in the Rural Districts, to accommodate existing site conditions.



Staff supported the request, which the Planning Commission granted in their motion to approve this Docket.

### **VIII. SUMMARY AND CONCLUSION**

The land use under consideration is one that is allowed by Special Use in the Rural Districts. Special Use Permit requests are considered on a case-by-case basis, and if there is a reasonable presumption that off-site impacts can be effectively mitigated through Conditions of Approval, as is the case here, a recommendation of Conditional Approval is appropriate.

In the case of this particular land use, the Applicant demonstrated a willingness to work with neighbors and staff to find ways to mitigate off-site impacts. The Condition of Approval requiring screening for outdoor storage, for instance, was first recommended by a neighbor, and was eventually imposed as a Condition by the Commission (Condition #6). While it is located in an area designated Rural Residential, the property is a short distance from a paved road in the County maintenance system, and less than one-mile from nearby State Highway 80. In addition, the use is in a location fairly suited to provide services to local residents with a minimum of through traffic.

The Appellants have indicated various concerns as to why the Commission's decision should be overturned. For example, the business activities began at this location without a permit and the use of the underground storage tank was not revealed at the time of Citizen Review. (The tank is considered accessory to the septic pumping business and does not of itself constitute an additional land use category). However, the underground storage tank, and concerns about the potential impact in the event of a spill, resulted in some neighbors who initially supported the business to later oppose it. The Applicant is in discussion with ADEQ and the County Health Department as to how to permit the tank in a safe and effective manner; Condition #5 would obligate the Applicant to follow through on such permits and requirements.

Although the Docket did result in a good deal of discussion and debate at the May 15, 2013 Commission hearing, the majority of the Commission voted to approve.

#### **Factors in Favor of Denying the Appeal**

1. With the Conditions of Approval recommended by staff, the request complies with the eight applicable Special Use factors used by staff to analyze such requests;
2. The St. David Area Plan supports, in its Vision Statements and Policies, locally-owned businesses that serve the local area;
3. Off-site impacts can be effectively mitigated with the Conditions of Approval recommended by Staff;
4. Within the 1,500-foot buffer, two neighbors support the Special Use request;
5. The Rural Zoning Districts allow for various business activities as Special Uses; and
6. On a 4 – 3 vote, the Planning Commission voted to Conditionally Approve.

**Factors Against Denying the Appeal**

1. The Applicant established the land use without a permit; the Special Use request is intended to rectify a violation;
2. Although the St. David Area Plan is generally supportive of Special Uses that serve the local residents, such uses are encouraged in Neighborhood Business Districts, or areas with a Neighborhood Conservation designation, not in Rural Residential Areas as in this case; and
3. The Appellants have submitted a petition with 50-signatures for residents inside and outside the 1,500-foot notification area opposing the Special Use for the reasons mentioned earlier.

**IX. RECOMMENDATION**

Based on the factors in favor of denial, Staff recommends the Board of Supervisors **deny** the appeal, and uphold the May 15, 2013 decision of the Planning and Zoning Commission, granting Special Use approval for Docket SU-13-07.

Staff further recommends the Board subject the land use to the following Conditions of Approval, which were approved by the Commission on May 15, 2013.

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12-months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18-months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant;
2. As part of the commercial permit process, the Applicant shall obtain a right-of-way permit for installation of a commercial apron at the Patton Road access;
3. There shall be no on-site washing or rinsing of portable restroom units on the property;
4. It is the Applicant's responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations;
5. Any changes to the approved Special Use shall be subject to review by the Planning Department and may require additional Modification and approval by the Planning and Zoning Commission; and



6. All portable restroom units/commercial vehicles shall be screened with a minimum six-foot high, opaque screening device, per the standards set forth in Section 1805 of the Zoning Regulations.

Finally, staff also recommends that the setback Modification discussed above be applied to the land use as part of such approval.

#### **X. ATTACHMENTS**

- A. Appeal Documents
- B. Applicant's Response
- C. Special Use Application and Attachments
- D. Public Comment
- E. Legal Notice